REMARKS/ARGUMENTS

Claims 1-21 are currently pending in the above-identified application. Claims 1-4, 9 and 16 have been amended. Support for these amendments is identified in the following remarks. No new matter is added by these amendments.

As an initial matter, Applicant requests the Examiner acknowledge the Supplemental Information Disclosure Statement filed on August 5, 2003.

Rejections under 35 U.S.C. §102

Claims 1-21 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Emery *et al.* (U.S. Patent No. 6,303,558). The Office characterizes Emery *et al.* as teaching a particulate detergent composition or component having a bulk density of at least 600 g/l and comprising at least 10% by weight of detergent surfactant and from 10 to 70% by weight of detergency builder, the detergent composition or component being composed of at least two and preferably at least three, granular components: granules comprising at least 60% by weight of anionic surfactant, granules comprising at least 20% by weight nonionic surfactant and less than 10% by weight aluminosilicate and, optionally, granules comprising up to 100% by weight of detergency builder and optionally from 0 to 10% of nonionic or anionic surfactant (referring to column 2, lines 5-20.) The Office further characterizes Emery *et al.* as disclosing that other detergent ingredients (such as bleach precursors, alkali metal carbonates, water-soluble crystalline or amorphous alkaline metal silicates, anti-redeposition agents, foam control agents and foam boosters) may be postdosed to the composition in order to provide detergent benefits (referring to column 4, line 55 to column 5, line 5).

The Office also characterizes Emery *et al.* as disclosing anionic surfactants like fatty ester sulphonates, C8-C15 primary and secondary alkylsulphates; and nonionic surfactants like primary and secondary alcohol ethoxylates, and C8-C20 aliphatic alcohols ethoxylated with an average of from 1 to 20 moles of ethylene oxide per mole of alcohol (referring to column 5,

lines 40-60). The Office also states the particles may be coated with a layering agent (referring to column 3, lines 10-45).

The Office acknowledges that Emery *et al.* do not specifically teach a granular or powdered detergent composition having reduced di-salt formation containing first particles comprising alpha-sulfofatty acid ester, second particles comprising additional detergent components that cause more than a minor amount of additional di-salt formation, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

The Offices reasons it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a granular or powdered detergent composition having reduced di-salt formation containing first particles comprising alpha-sulfofatty acid ester, second particles comprising additional detergent components that cause more than a minor amount of additional di-salt formation, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because the broad teaching of Emery *et al.* suggest a granular or powdered detergent composition having reduced di-salt formation containing first particles comprising alpha-sulfofatty acid ester, second particles comprising additional detergent components that cause more than a minor amount of additional di-salt formation, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

The Office responds to Applicant's prior response by alleging that the compositions as suggested by Emery *et al.* would have the same di-salt formation properties as those recited by the instant claims, alleging that Emery teaches compositions containing the same components in the same proportions as recited by the instant claims. The Office also alleges that the claims recite "substantially free" of components that cause more than a minor amount of additional di-salt formation, which would permit the inclusion of components such as aluminosilicates, and also alleges that the anionic granules may contain 0% of detergent builder.

The Office also alleges that the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different

problem (citing *In re Linter*, 458 F.2d 1013,173 USPQ 560 (CCPA 1972) and MPEP §2144). The Office also notes that the Examiner maintains that Emery would suggest C16 to C18 fatty acid ester sulfonates because Emery teaches that suitable anionic surfactants include fatty acid ester sulfonates, and that Applicant has provided no evidence or data showing the criticality with respect to C16 to C18 ester sulfonates.

To establish a *prima facie* case of obviousness, the cited reference or references must teach or suggest all of the claim limitations. If more than one reference is combined, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. There must also be a reasonable expectation of success. (*See* MPEP §2142.) Although a reference need not expressly teach that the disclosure contained therein should be combined with another, the showing of combinability, in whatever form, must nevertheless be clear and particular. *Winner Int'l Royalty Corp. v. Wang*, 53 USPQ2d 1580, 1586-87 (Fed. Cir. 2000). "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992).

References relied on in making a rejection under 35 U.S.C. §103(a) must be considered in their entirety, including disclosures that teach away from the claimed invention. *See, e.g., W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ2d 303, 313 (Fed. Cir. 1983) (stating, *inter alia,* the district court erred, in part by "considering the references in less than their entireties, *i.e.*, in disregarding disclosures in the references that diverge from and teach away from the invention at hand."). *See also* MPEP §2141.02 (pp. 2100-95 to -96); *Ex parte Anderson*, 21 USPQ2d 1241, 1257 (BdPatApp&Int 1991) ("However, it is well settled that the entire disclosure of a reference must be considered under 35 U.S.C. §103, not just the working examples.").

"A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or

would be led in a direction divergent from the path that was taken by the applicant. The degree of teaching away will of course depend on the particular facts; in general, a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant." *In re Gurley*, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994).

Applicant respectfully traverses the rejection of the claims as allegedly obvious in view of Emery *et al.* Applicant respectfully disagree that Emery would suggest methyl ester sulfonates allegedly because Emery allegedly teaches that suitable anionic surfactants include fatty acid ester sulfonates. Emery *et al.* does not expressly teach or suggest methyl ester sulfonates. Further, as noted by Applicant in response to the last office action, Emery makes only passing reference to fatty acid ester sulfonates, which might be alleged to be a disclosure of a broad generic class. Assuming *arguendo* this assertion, Applicant disagrees that an allegedly broad generic disclosure of fatty acid ester sulfonates teaches or suggests methyl ester sulfonates, let alone specific chain length methyl ester sulfonates. Further, Applicant respectfully notes that the art contains references teaching away from the use of methyl ester sulfonates. *See, e.g.*, EP 336 740 B1 (which teaches against the use of short chain FAES materials in certain applications). Thus, it is not clear which of the myriad possible fatty acid ester sulfonates would be applicable.

Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1-21 in view of Emery *et al.*

Without acquiescing the rejection, but to proceed with more compact prosecution of this case, Applicant amends claims 1, 9 and 16 to recite that the methyl ester sulfonate is a C_{16} or C_{18} enriched methyl ester sulfonate. Support for this amendment is found throughout the instant specification, such as, for example, at pages 6, line 19 to page 7, line 2. Claims 1-4 are also amended to correct minor typographical errors or for consistency.

Double Patenting Rejections

Claims 1-21 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 1-27 of copending U.S. Patent Application No. 09/574,764 (US 6,534,464). The office issued this rejection as a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Claims 1-21 also stand rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 1-25 of commonly owned U.S. Patent No. 6,057,280.

Applicant notes that U.S. Patent Application No. 09/574,764 has issued as U.S. Patent No. 6,534,464.

Without acquiescing to these rejections, Applicant requests these double patenting rejections be held in abeyance pending the indication that the instant claims are otherwise allowable. Applicant is considering whether to submit a terminal disclaimer solely for its statutory purpose of removing these obviousness type double patenting rejections.

CONCLUSION

In view of the foregoing, Applicant believes all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 206-467-9600.

Respectfully submitted,

Dated: Feb. 13, 2004 By: _____
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Attachments